HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

M.A. No.123 of 2004

Appellant Non-Appellant	:		Employees State Insurance Corpo. Through – Recovery Officer ESI Cor. Panchdeep Bhawan Nanda Nagar, Indore M.P.
			Versus
Respondents Applicant	:	1.	M/s Aarya Electricals, 740, F-Urla Aydyogik Chhetra, Raipur C.G. Through – Vivek Arora S/o K.S.Arora, Niyojak Partner, C.S.E.B. Colony Dagania, Raipur C.G.
Non-Applicant No.2	:	2.	Branch Manager, State Bank of Indore, Opp. Rajkumar College, Raipur C.G.
	:	3.	Employees Insurance Court, Labour Court, Raipur C.G.

Memo of Appeal under u/s 82 (2) of the Employees State Insurance Act, 1948

Present:-
Appellant by Shri S.P.Kale, learned counsel.
Respondents by Shri Kshitiz Sharma, learned counsel.

ORAL ORDER
(Passed on 16.11.2007)

Heard.

2. This appeal raises the following substantial question of law:

"Whether the lower Court was justified in holding that the employer was not responsible for making a contribution payable by the employer under the Employees State Insurance Act, 1948 for the period from 16.08.1995 to 31.12.1996 on the ground that the inspection of the industry concerned was carried out on 4.5.1995 i.e. prior to coming into the force of the Act?"

3. It is not in dispute that the Employees State Insurance Act, 1948 (hereinafter referred to as the Act) was made operational to the area wherein the industry of respondent No.1 is situated by a notification issued under Section 1 sub-clause (3) of the Act from 16.08.1995. It is also not in dispute

that inspection of industry owned by the respondent No.1 was carried out by the Inspector of the Employees State Insurance Corporation on 04.05.1995. The liability of the employer to pay contribution under Section 40 of the Act and to furnish returns and to maintain registers in certain cases under Section 44 of the Act arises from the date from which the Act is made applicable to such an industry. Similarly, an inspector appointed by the Employees State Insurance Corporation acquires the right to enter any office establishment, factory or other premises occupied by a principal or immediate employer from the date of commencement of the Act. Sub-section (2) of Section 45 of the Act makes it clear that an Inspector may, for the purpose of ascertaining whether any of the provisions of the Act have been complied with, proceed to act under sub-clauses (a) to (e) of sub-section (2) of Section 45 of the Act. In this view of the matter, I am of the considered opinion that recovery of contribution on the basis of an inspection carried out by the Inspector before the commencement of this Act could not be sustained in the eye of law. Thus, the order passed by the lower Court cannot be faulted with. The question of law framed by this Court is answered against the appellant in the negative.

4. In the result, the appeal is dismissed.

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Anjani